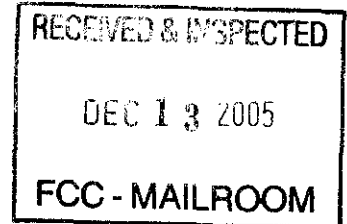


Federal Communications Commission

**Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc.
Petition for Rulemaking**

CG Docket No. 05-231; FCC 05-142

Comment Submitted by: Alexandra Cherrie
Villanova University School of Law
299 North Spring Mill Road
Villanova, PA 19085
acherrie@law.villanova.edu



Comment Submitted via U.S. Postal Service mail.

Comment Submitted To: Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW.
Washington, DC 20554

Date: November 29, 2005

I. Introduction

I welcome this opportunity to submit these comments in response to the Federal Communications Commission's ("the Commission") request for public comment regarding the Commission's closed captioning rules. I am commenting in response to the *Closed Captioning of Video Programming; Telecommunications for the Deaf, Inc. Petition for Rulemaking*, FCC 05-142, which appeared in the *Federal Register* on September 26, 2005. While I am aware that the closing period for comments was November 25, 2005, I hope the Commission will still consider this comment.

I am currently a third-year law student at Villanova University School of Law, however the following comments are based solely on my personal experiences as a hard-of-hearing individual that regularly uses closed captioning. Over the years, closed captioning technology has developed and improved in many ways, providing more individuals with access to communication. Closed-captioned broadcasts provide valuable information via television shows, news shows, other entertainment and even commercials. Congress' goal for giving the Commission responsibility to enforce closed captioning rules is "to ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school, and workplace." The Commission should continue to ensure the closed captioning rules provide high quality access to millions of deaf and hard-of-hearing Americans and other individuals who rely on closed captioning.

No. of Copies rec'd 04
List ABCDE

II. Importance of Closed Captioning

Closed captioning is an important assistive technology where the audio portion of programming is displayed as text superimposed over the video.¹ Televisions with screens over 13 inches are required to have built-in decoders to display the closed captions.² The closed captions can then be viewed using the television remote control or other on-screen menu options and gives a real-time transcript of the video programming audio.³ Many individuals rely on this closed captioning technology to understand speakers on a television program.

Closed captioning allows individuals who are deaf and hard-of-hearing to be part of the “cultural mainstream of our society” by providing an essential link to news, entertainment, and other information.⁴ As a hard-of-hearing individual, the effect closed captioning had on my life is significant. Before the mid-1990’s there were very few programs captioned and the only show I watched was “The Price is Right.” The show was easy to follow without understanding the speakers. It is evident that I missed out on many things my peers knew from watching television. For example, in games of Trivia Pursuit, I know very few answers to questions regarding the Eighties and early Nineties about events and people in politics, sports, pop culture, and more. Almost all television shows are now captioned and I can watch any of these shows. Individuals who are deaf and hard-of-hearing, such as myself, now have the same access to the “cultural mainstream.”

Another benefit of closed captioning is for individuals whose first language is not English. These individuals can watch closed captioning to improve their understanding and fluency of English. A friend of mine was born in Russia and immigrated to the United States when she was 13. She did not learn English by taking classes, but she actually learned how to speak and write English by spending time watching television. The closed captions were an additional tool to help with her language skills. Today she works as a lawyer in New York City, speaking and writing fluent English helped by watching closed captioning. It is not uncommon to hear similar stories where non-English speakers learn English from using closed captions.

It has also been shown that closed captions can be used as an innovative tool to teach children. The National Center to Improve Practice in Special Education has research stating closed captions can improve language skills for many groups of children.⁵ Closed captioning can be integrated into a school curriculum to teach reading

¹ Federal Communications Commission, *CONSUMER FACTS, CLOSED CAPTIONING*, available at <http://www.fcc.gov/cgb/consumerfacts/closedcaption.html> (last visited Nov. 7, 2005).

² Video Caption Corporation, *HOW ARE CLOSED CAPTIONS ACCESSED ON TV?*, available at <http://www.vicaps.com/faq.html#accessontv> (last visited Nov. 7, 2005).

³ *Id.*

⁴ Federal Communications Commission, *supra* note 1.

⁵ California State University, *CENTER ON DISABILITIES, TECHNOLOGY AND PERSONS WITH DISABILITIES CONFERENCE 2004, AUTOMATED CLOSED CAPTIONING*, available at <http://www.csun.edu/cod/conf/2004/proceedings/212.htm> (last visited Nov. 7, 2005).

and to improve literacy skills.⁶ This changes the traditional mainstream model of learning and teaching, while promoting the inclusion of children with different backgrounds, skills, abilities, disabilities, and interests.⁷ Closed captioning could enhance the learning experience for all children.

Closed captioning is valuable to a wide range of individuals. Deaf and hard-of-individuals are given greater access to television programming, along with other individuals such as non-English speakers and students. In addition, captioning is also being used in gyms, airports, bars, and other public places where audio cannot be heard to benefit a wide audience of viewers.⁸ Television programming has become an important part of the American life and the value of closed captioning cannot be underscored.

III. General Considerations on Current Status of Commission's Closed Captioning Rules

The Telecommunications for the Deaf, Inc. filed a Petition for Rulemaking, requesting that the Commission initiate rulemaking to “establish additional enforcement mechanisms to better implement the captioning rules, and to establish captioning quality standards to ensure high quality and reliable closed captioning.”⁹ The current closed captioning rules were adopted almost 10 years ago in 1997.¹⁰ These rules were invaluable in starting to provide closed captioning to many individuals, but it is now time for additional rulemaking. The main opponent to revisiting the captioning rules is The National Cable & Telecommunications Association (NCTA), contending the rules “established a careful balance of interests.”¹¹ However, due to the overall strong support for the *TDI Petition*, the Commission granted the *NPRM*.

Specifically, the Commission seeks comments on the current status of the closed captioning rules in ensuring that video programming is accessible to deaf and hard-of-hearing Americans and whether any revisions should be made to enhance the effectiveness of those rules; and several compliance and quality issues relating to closed captioning raised in the Petition for Rulemaking filed. The following comment addresses several of the specific issues, but not all of the issues brought up the *NPRM*. Overall, I join in support of the petition for rulemaking to create more organized and higher quality closed captioning rules. This comment will add my personal comments on the various concerns.

⁶ *Id.*

⁷ *Id.*

⁸ VIDEO CAPTION CORPORATION, WHO BENEFITS FROM CAPTIONED PROGRAMS?, available at <http://www.vicaps.com/faq.html#whobenefits> (last visited Nov. 7, 2005).

⁹ Federal Communications Commission, *NOTICE OF PROPOSED RULEMAKING (NPRM)*, FCC 05-142 1, 5 (July 21, 2005).

¹⁰ 47 CFR 79.1.

¹¹ *NPRM*, *supra* note 9.

A. Non-technical Quality Standards for Closed Captioning

The non-technical aspects of closed captioning include accuracy of transcription, spelling, grammar, punctuation, placement, identification of nonverbal sounds, pop-on or roll-up style, verbatim or edited for reading speed, and type font.¹² Currently there are no standards for these aspects of closed captioning as the Commission encouraged the video programmers producers themselves to establish standards through market incentives.¹³ The NCTA claims regulating non-technical quality standards would be counterproductive and burdensome as every effort is already made to avoid errors.¹⁴ In addition, NCTA believes there is already enough incentive to provide quality captions.¹⁵ However, the non-technical aspects of closed captioning are perhaps the most important to the viewer. This is the text that a viewer reads and can really affect an individual's viewing experience. There has been little improvement in non-technical standards over the years; therefore the Commission should establish standards for the non-technical quality of closed captioning.

Spelling is very important in any written piece and most people find it frustrating to read text that is peppered with spelling errors. This is particularly true when one is trying to enjoy a television program. Sometimes the errors are very minor and an individual can easily translate the mistake. Other times, the spelling mistakes are so numerous; it can actually be awkward to read. It is understandable that perfection may be unattainable, but I propose for the Commission to adopt an acceptable "words per minute spelling error rate" for closed captioning. This acceptable "words per minute spelling error rate" would have to be balanced to allow for a few mistakes in any given program, but not an abundant number of mistakes. Reducing the number of spelling errors would be a great improvement to closed captioning.

Another important part of closed captioning is the accuracy of grammar along with verbatim or edited for reading speed. Often television shows use slang and a particular style of dialect, as speech does not always follow "proper" English grammar. The closed captioning can sometimes use proper grammar when it is obvious that the speaker on a popular television show actually using slang. It appears that the captionist takes the liberty of "fixing" the text. It is unfair that edited and inaccurate information is being conveyed to a closed captioning user. Individuals who can hear the program are given an advantage. The Commission should adopt rules that require the closed captioning to be verbatim of the speaker so that everyone has access to the same information.

Identification of nonverbal sounds can actually be very important. The sound of a phone ringing, a bird chirping, or an explosion in the background can be crucial to the plot of a particular story. If these nonverbal sounds are not captioned, a viewer could be confused as to what is happening in the story. This is not to say every single "tap" or

¹² NPRM, *supra* note 9 at 6.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

“blip” sound should be captioned. However, an effort should be made to caption more of the nonverbal sounds that are key to a storyline and the Commission should consider this in adopting non-technical standards.

Other non-technical aspects, such as placement, type font, and pop-on or roll-up style could be considered to be personal preferences. Disadvantages and advantages exist for each of these, but none is really worst than the other. The placement of captioning at the top of the screen can cover the heads of people in an entertainment show, while placement of captioning at the bottom of the screen can cover other text displaying information in a news show. A large type font takes up more room on the screen, but is easier to read. Pop-on text stays on the screen longer until replaced by new text, while roll-up text is in a continuous motion.¹⁶ There is no universal combination that makes closed captioning more effective. These are really dependent on the preferences of a particular individual, therefore it would be difficult for the Commission to make a rule for these non-technical standards.

The non-technical standards should be different for pre-produced programs versus live programming. Obviously, when a program is pre-produced there is much more time for the captionist to prepare the text. The error rate for pre-produced programs should be zero or as close as possible. In live programming, a few more mistakes would be acceptable, but the error rate should not be high. Live programs often present more important information such as breaking news, presidential addresses, or emergency information. This type of information needs to have a very accurate transcription. It has been suggested that in a live show, it would be acceptable for a maximum of 3% of the words to be wrong, misspelled or absent.¹⁷ This is an acceptable standard that the Commission should set.

Rules for the non-technical standards of closed captioning need to be established by the Commission. There are many non-technical aspects that play an important role in the quality of the closed captioning viewed on screen. I strongly advocate the need for setting non-technical standards to improve the quality of closed captioning.

B. Technical Quality Standards

The technical aspects of closed captioning focus on the delivery of the captioning. The current “pass through” rule ensures that video programmers deliver existing closed captions in a complete and intact manner.¹⁸ In my opinion, there are still many technical problems with the delivery of captioning and the current rule has not been sufficient to ensure effective captioning.

Television program listings, such as the TV Guide or the DISH TV menu guide, list whether or not a show is closed captioned. A viewer then has knowledge if closed captions should be delivered. Commonly, captions disappear during programming, are

¹⁶ NPRM, *supra* note 9 at 6 fn. 34.

¹⁷ NPRM, *supra* note 9 at 7.

¹⁸ *Id.*

impossible to read, or sometimes are completely missing. It is very frustrating to be in the middle of watching a television program to have the captioning completely disappear. Other times, the captioning is completely incomprehensible and turns to complete garble. I have often, for several of these technical problems, been unable to finish watching a program due to the lack of captioning.

The new DISH TV and satellite feeds are also presenting some new possible technical captioning difficulties. There have been times where a show would have captioning on one television linked onto my DISH network, but was not available on another television. The “disappearing captioning” was odd since it would only happen on the weekends. After several phone calls to DISH customer service, it was discovered that DISH TV was being overloaded with viewers on the weekend. Captioning feed into televisions hooked in a secondary DISH connection was being blocked since there were no available circuits.

The Commission needs to establish additional mechanisms to address the general technical problems that are occurring with captioning feed. Instead of waiting for a customer complaint, the Commission should require video programmers to take a proactive approach and monitor the equipment that feeds the closed captioning. The additional issues presented by DISH TV and satellite feed could also be addressed and prevented through active monitoring.

C. Complaint Procedures

Video programming distributors must first be contacted with complaints within one year from the alleged violation.¹⁹ The Commission felt this was the most effective and easily accessible way for consumers to file complaints.²⁰ I have been using closed captioning for many years and I honestly never knew there was a complaint procedure. The Commission should make sure the complaint procedure is standardized to be “user friendly” and to obtain quick results.

Complaints must first be filed with video programming distributors. However, I believe complainants should be allowed to directly contact the Commission without first dealing with the video programming distributors. This would standardize the complaint procedure and would also give the Commission greater control to monitor violations. If it would be burdensome for the Commission to handle complaints directly, then contact information should be easily accessible along with a standardized captioning complaint form. As with any situation, it is often hard to find the appropriate person or place to file a complaint. Explicit information should be provided on how and where complaints should be filed. Also, it is difficult or impossible for deaf and hard-of-hearing individuals to communicate using the phone, so this information should be posted on a website or on other written material. The *TDI Petition* also suggests a standardized form for filing complaints. This would be a great idea in order to guide and facilitate the complaint

¹⁹ NPRM, *supra* note 9 at 10.

²⁰ *Id.*

process. Distributors would also benefit from having all the necessary information provided in one form.

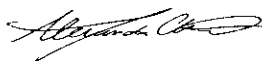
D. Fines and Penalties for Failure to Caption

Finally, there must be a method to enforce compliance with the Commission's closed captioning rules. The *TDI Petition* suggests punitive measures as an incentive to force the industry to comply with the rules.²¹ I agree that there needs to be a scheme in place that will enforce the rules and deter violations. Occasional technical problems will be inevitable, but willful or repeated violation of the rules should be punished. The Commission should establish a scheme of fines that would ensure the industry provides high quality and continuous closed captioning.

IV. Conclusion

Closed captioning is the only accommodation that allows a deaf or hard-of-hearing individual access to watch television and understand the "cultural mainstream." The *NPRM* contains many issues, many of which I have personally experienced problems regarding. The need for updated closed captioning rules is evident. I strongly encourage the Commission to implement new rules to ensure quality closed captioning continue to be available. I thank the Commission for the considering this comment on the closed captioning rules.

Respectfully Submitted,



Alexandra Cherrie

²¹ NPRM, *supra* note 9 at 13.